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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,739	07/07/2003	Thomas L. DeFazio	ISR-PAT/CTR-ICON	6096
24390	7590	06/07/2006	EXAMINER	
LUCASH, GESMER & UPDEGROVE, LLP 40 BROAD ST SUITE 300 BOSTON, MA 02109			YEAGLEY, DANIEL S	
			ART UNIT	PAPER NUMBER
			3611	

DATE MAILED: 06/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/614,739	Applicant(s) DEFAZIO ET AL.	
	Examiner Daniel Yeagley	Art Unit 3611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 32,39-41,54,55 and 57-76 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 32,39-41,57 and 59-62 is/are allowed.
- 6) ☒ Claim(s) 54,55,58,63-69 and 71-76 is/are rejected.
- 7) ☒ Claim(s) 71 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 December 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 54, 55, 58, 63 – 73, 75 and 76 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- a. Regarding claims 54 and 55, recites the limitation "*the first and second sets of wheel elements*" which lack antecedent basis.
- b. Regarding claims 58 and 71, recite "*the base*" which lacks antecedent basis.
- c. Regarding claims 63 and 76, line 7 and line 3, respectively; recite the limitation "*a portion of the body*" it is unclear if applicant is trying to claim a second portion of the body or is referring to *the* portion of the body already recited earlier in the claim.
- d. Regarding claims 71 and 72, recite the limitation "*the first end wheel element*" which lack antecedent basis.
- e. Regarding claim 73, lines 3 – 4, recite the limitation "*the top of the front and rear wheels*" which lack antecedent basis.
- f. Regarding claim 75 fails to further limit the subject matter of the previous claim and is incomplete.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 63 – 69 and 71 – 73 are rejected under 35 U.S.C. 102(b) as being anticipated by Mankey '989.

Mankey shows a wheeled structure having a first and second end wheel elements 42, 46 and an intermediate wheel element 44 rotatably attached to first and second side portions of a body (figure 2), wherein the intermediate wheel element is configured to contact the ground plane and the first and second wheel elements are configured to selectively contract or be adjacent to the ground plane (column 1-3), such that there is no overlap between adjacent wheel elements and the first and second wheel elements are aligned in a row (figure 1), and further discloses a tail element 60 that is pivotally coupled to the body by an articulation element that is a pivot, hinge or a flexible body control by a drive module 74 which selectively moves the tail element between a second position (figure 1-5) and a stowed position that substantially conforms to a body profile (figure 6) and is substantially within a profile defined by a plane that is substantially tangent to the top of the front and rear wheels and within a perimeter defined by the front and rear wheels, as best understood (figure 3 or 6), wherein the tail element is articulated furthest forward with respect to a base and is long enough to contact a surface forward of the first wheel element such as a step of a stairway.

5. Claims 74 and 75 are rejected under 35 U.S.C. 102(b) as being anticipated by Schaffner et al '131.

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Schaffner shows a wheeled structure having a first and second end wheel element and an intermediate wheel element 16 rotatably attached to side portions of a body (figure 1), wherein the intermediate wheel element 16 is always in contact with a ground plane and having the first and second wheel elements 18 and 42 being selectively in contact with or adjacent to the ground plane such that the wheel elements are arrayed with a selective degree of rocker, wherein the intermediate wheel element has a wider track than the first and second wheel elements (figure 7).

Allowable Subject Matter

6. Claims 32, 39 – 41, 57, 59 – 62 are allowed.
7. Claim 70 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
8. Claims 54, 55, 58 and 76 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

9. Applicant's arguments with respect to claims 54, 55, 58, 63 – 69 and 71 – 76 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Auer et al '234 and Wells 409 show a wheeled structure having first and second sets of wheel elements with an intermediate wheel element that always contacts the ground with the first and second wheel element being selectively in contact with the ground.


Strautnieks 343 shows a wheeled structure having an intermediate wheel element with a wider track than the first and second wheel elements.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel Yeagley whose telephone number is (571)-272-6655. The examiner can normally be reached on Mon. - Fri; first Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley D. Morris can be reached on (571) - 272 - 6651. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

D.Y.


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